

ENVIRONMENTAL QUALITY COUNCIL

June 25 and 26, 1998

Original Minutes with Attachments

COUNCIL MEMBERS PRESENT

Rep. Vicki Cocchiarella, Co-Chair
Sen. Ken Mesaros, Co-Chair
Rep. Haley Beaudry
Sen. William Crismore
Rep. Kim Gillan
Sen. Lorents Grosfield

Sen. Bea McCarthy
Sen. Barry Stang
Rep. William Tash
Ms. Julie Lapeyre
Rep. Karl Ohs
Jeanne-Marie Souvigney

COUNCIL MEMBERS EXCUSED

Rep. George Heavy Runner
Sen. Vivian Brooke
Mr. Jerry Sorensen
Mr. Bill Snoddy
Mr. Gregory Tollefson

STAFF MEMBERS PRESENT

Mr. Todd Everts
Ms. Kathleen Williams
Mr. Larry Mitchell
Ms. Mary Vandembosch

VISITORS' LIST

Attachment #1

COUNCIL ACTION

- Approved minutes from the May 8, 1998 meeting.
- Toured various TMDL-related locations in the Beaverhead Valley including the Beaverhead River, Rattlesnake Creek, and Blacktail Deer Creek.
- Decided that Co-Chairs of the Water Policy Subcommittee, Co-Chairs of the EQC and staff will travel to Lewistown sometime in July to review the Kendall Mine issue.
- Set next meeting date for September 10 and 11, 1998 in Helena.

THURSDAY, JUNE 25TH, 1998
WESTERN MONTANA COLLEGE - DILLON

I CALL TO ORDER

CO-CHAIR MESAROS called the meeting to order at 1:45 p.m.. He welcomed EQC members, staff, guests and presenters to join the Water Policy Subcommittee TMDL Tour. He acknowledged MS. WILLIAMS for organizing the meeting and tour.

Dillon Mayor, Mayor Warther, welcomed everyone to Dillon. He remarked that they have diverse water bodies in the area including the Big Hole and Beaverhead Rivers and Clark Canyon Reservoir. He added that they have been working on a waste water treatment project that was very difficult to complete. Litigation has complicated the project. With exception of the testing procedure, the project is complete. Their previous lagoon project occurred in 1984 and included two aerated cells. Today they are still using the same specifications as were used in 1984. Leakage is 500 gallons per day per acre. His engineers have determined that the ponds will drop six inches in one year. The leakage is very small. Other elements which affect the ponds include wind, rain water, evaporation, etc. The specifications they have been under for the last 15 years are difficult to measure with today's technology. The review process needs to be simplified. Currently Dillon's litigation liability is in excess of a million dollars.

II WATER, HB 546 (TMDLs) AND THE BEAVERHEAD VALLEY

A. Introduction

SEN. MCCARTHY explained that the tour would include three examples of streams that are on the impaired threatened waters list. The Committee was provided with tour packets, **Exhibit 1**.

B. Tour Preparation

Stuart Lehman, Department of Environmental Quality (DEQ), explained that he and **Bob Bukantis, DEQ**, split responsibilities for TMDL implementation and monitoring. **Mr. Lehman** provided a copy of the "Big River News", **Exhibit 2**. He remarked that the cover article explained and summarized Montana's approach to TMDLs. HB 546 includes numerous components. The clarified DEQ's legal authority to monitor water quality and coordinate TMDL development. Public participation has been expanded and a statewide advisory group has been created. The "list" requires sufficient and credible data. The state TMDL Advisory Group has helped set priorities by developing criteria for ranking waters. Schedules include the ten year implementation of TMDLs for approximately 800 streams around the state. Other schedules include developing an implementation plan by May of this year. Interim protection allows activities to continue in watersheds where TMDLs are pending, providing that interim measures are taken. This is a voluntary approach. Monitoring is used to track the progress of the implementation of TMDLs. TMDL work will not interfere with water rights.

A series of meetings have been held to discuss the state's priority list for developing TMDLs. The list has been submitted to and approved by the EPA. Phase I includes two and a half years of working with their existing projects and coordinating with other federal and state agencies, local watershed groups and districts in the implementation of the first 100 TMDLs. Phase II is based on the legislation deadline of October 1, 1999. They will begin working on a newly prioritized list of impaired water bodies and also on the list that has been verified for sufficient and credible data. They hope to achieve another 300 additional TMDLs. Phase III includes fostering development of new groups and using models from other areas in the state to implement the remaining TMDLs. The state has been divided into four regions which include the Upper Missouri, Westslope, Lower Missouri and Yellowstone Regions.

The approach to TMDLs is a watershed-based approach that follows steps which may be used in any natural resource plan. First an inventory and assessment is needed. The next step is to develop a plan which will address the problem and set measurable goals. Implementation can include a wide variety of management schemes. Monitoring and evaluating the progress are also elements in the process.

Additional handouts "303(d) Water Quality Limited Waterbodies List - A Crash Course" **Exhibit 3**, "Local TMDL Development" **Exhibit 4**, "Waterbody Summary Sheet" **Exhibit 5**, and "Montana Stream Management Guide" **Exhibit 6**.

The Committee members participated in a field tour of various locations in the Beaverhead Valley. The meeting recessed for the day.

FRIDAY, JUNE 26TH, 1998
WESTERN MONTANA COLLEGE - DILLON

I CALL TO ORDER - ROLL CALL

CO-CHAIR MESAROS called the meeting to order at 8:00 a.m. Roll call was noted; SEN. BROOKE, REP. HEAVY RUNNER, MR. SNODDY, MR. TOLLEFSON, and MR. SORENSEN were excused.
(Attachment #2)

II ADOPTION OF MINUTES

Motion/Vote: CO-CHAIR COCCHIARELLA MOVED THAT THE MINUTES OF THE MAY 8, 1998 EQC MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.

III ADMINISTRATIVE MATTERS

▸ *New Staff Person*

MR. EVERTS introduced MARY VANDENBOSCH as the EQC's new staff person. He stated that MS. VANDENBOSCH had formerly worked for DNRC as a water planner and has over ten years of experience in this area. He added that two interns have been hired and would be assigned to the Water Policy Subcommittee and the Growth Subcommittee. Another part-time intern will be joining the staff this week.

▸ *EQC Work Plan Update*

MR. EVERTS explained that every element of the work plan had been completed to date. The studies have not been completed, but all the oversight functions which have been slated for the interim have been addressed.

▸ *Legislative Interim Committee Reorganization*

MR. EVERTS stated that a bill is being drafted and would be available for review in September after the Legislative Council has reviewed same. There will be changes regarding the EQC terms and makeup which will need the approval of the EQC.

▸ *Local Welcome to Dillon*

Donna Svalsted, Beaverhead County Commissioner, stated that Dillon residents were saddened by the passing of Dr. Dale Tash. Dr. Tash was an individual who loved Montana history and the Montana government process. He could teach these dry subjects to students in a way that made them enjoy and understand them. She expressed condolences to the Tash Family and to the people of Montana.

Five different mountain ranges are located in Beaverhead County. These mountains form a significant portion of the Missouri River Headwaters. Dillon is a strong agricultural community that has roots dating back to 1862 when Dillon was used as a place to raise horses for the nearby miners in Bannack. The county ranks first in the state in the production of cattle and sixth in sheep production. Beaverhead County is the number one producer of hay in the state of Montana and potatoes, barley and wheat are other crops raised in this area. The ancestors of this Valley have done a wonderful job of making this a beautiful place to live.

IV NATURAL RESOURCE PROBLEM-SOLVING AT THE LOCAL LEVEL – GOALS, SUCCESSES, AND CHALLENGES

► *Big Hole Watershed Group*

Jim Hagenbarth thanked the Council for traveling to Dillon. He remarked that disturbance is what keeps nature going. Ranchers are having a difficult time being good stewards of the land because they are having a difficult time using the disturbances necessary. They love the Big Hole River and want to keep it healthy. During the drought years of the late '80s and the early '90s, the situation was difficult. There was no water in the small streams or the large rivers. Recreation is very important but it is a use that does not enhance the resource. Recreationists criticize the livestock industry and agriculture when the rivers are low. Sometimes the key is to store the water so it goes down the river slowly.

During the dry years the Water Policy Committee told the local water users that they needed to work together locally and involve all interested parties. They formed the Glen Water Users Association in 1994. Their goal was to preserve the resources. In August of 1995, they invited other interested groups to attend their meetings. The Consensus Council and DNRC have been very helpful. During this time the DNRC decided to declare the river chronically dewatered. The water users cut an agreement with the DNRC to hold off that decision. It is still a concern of the group.

Their goals are to sustain the rural quality of life within the watershed area, promote economic activities that are compatible with environmental amenities, protect and enhance the natural resources within the watershed, and protect and respect existing water rights.

Irrigation can be handled so that the flow will return to the river at critical points in critical times. It doesn't make much sense to let the water run down the river in the early spring, if it can be slowed down. They have worked with the conservation district on a \$10,000 resource development grant on return flows in the Upper Big Hole. They have a \$250,000 multiple agency grant. They also have three new gauges in the Big Hole River. The gauges monitor the inflows of the tributaries in the areas as well as the outflow for irrigation diversion. They have used 319 funds to drill eight wells. The Upper Big Hole Basin has many ditches which are used to supplement stock water in remote areas. It takes massive diversions to accomplish this. At an earlier time, the Department of Fish, Wildlife and Parks hauled water to the area. They have now drilled six wells and have closed the ditches.

► *Beaverhead County Community Forum*

Robbie Garrett provided a copy of a booklet entitled, "Code of the New West", **Exhibit 7**. The Beaverhead County Community Forum was formed when Beaverhead County signed an MOU with various agencies. Three years ago a meeting was held with 160 people from Beaverhead County. The

goal of the group was to come up with a better method for land use planning in the County. The Montana Consensus Council and the Governor had input into this process. One of their first projects was to develop demographic, economic, employment, and personal income trends. Their major goal is to offer residents of Beaverhead County an opportunity to have a voice in the land use planning within the county.

One of the problems the MOU tried to address was to open the doors to the “mini kingdoms” created by state and federal agencies. Their greatest success has been to get everyone to the table to work through the process. It has been challenging to keep everyone at the table and working together. They have found that it has been more difficult to work with the state agencies than it has been to work with federal agencies. They also believe that they need to broaden their base of participation. They have a group of 20 people involved in the forum. They need a group of at least 120 persons. This will allow them to get better input and ideas from the full committee. It will also provide for returning governing to the populous. The group has to work very hard. They cannot sit at the coffee shop and complain.

► ***Ruby River Task Force***

George Swan remarked that they have faced a lot of problems on the Ruby River in 1994 and 1996. He presented a video depicting the citizens of Ruby Valley working together on the thorny challenges of water use and public access to the Ruby River. Gold was discovered in Alder Gulch in 1863. During the height of the gold rush, 30,000 people dredged Alder Gulch seeking their fortune. During the ‘20s through the ‘40s, agriculture became more prominent in the valley. Ranchers moved from raising sheep to raising beef cattle and working the semi-arid desert to its full potential. While irrigation fields lined the river forming a narrow corridor, some years the Ruby dried up, proving itself unreliable as a year around support for ranching. The solution was the completion of the Ruby Reservoir in 1938 by the State Water Conservation Board. The Dam and its two associated canals triggered what locals called “the greening of the Ruby”. It took a concentrated local effort of time and money to keep the project alive and to make it work. The water used by the crops is sometimes excess and goes past the root zone down into the ground water and then becomes return flow. The return flows will go back into the river system at a point down the stream. That water then becomes available to be used by other irrigators later in the season. By irrigating up high early in the season, there will be return flows to maintain the river system later in the season. Because of the Ruby Reservoir the Ruby River now supports the diversified communities of Alder, Sheridan and Twin Bridges. This has caused a larger retirement population, more agriculture, new housing, and increased camping and fishing.

The dam was built to insure a steady supply of water for irrigators in the Valley. At the time it was built, there wasn’t a concern for flood control or instream flows. After the flood of 1984, there was pressure on

the water users to operate the project for flood control. The summer of 1994 was hot and dry. There was little rain to supplement the amount of water being stored in the Ruby Reservoir. More than once during those hot months, the state asked the Ruby water users to release extra stored water in order to keep the river flowing to sustain the fishery. The local dam manager complied with the request, even though it meant that individual ranchers could lose as much as \$15,000 worth of hay crop in the process. On September 4th, Ruby Valley irrigators made a desperate call for one last spurt of water for their parched hay fields, but more than water spilled through the gates of the dam and into the river. Along with the river came volumes of sludge from the reservoir floor. This sediment had accumulated unbeknownst to either state personnel or the local dam managers. In addition to the water and sludge came thousands of fish, primarily rainbow trout. The river below the dam became immediately clogged with sediment and approximately 15,000 to 20,000 fish were killed. It was one of the largest fish kills in Montana history. State government personnel and Ruby Valley residents teamed up to respond to the crisis. Dam gates were closed and canal gates were opened to divert some of the sediment out of the river. Local ranchers and sportsman worked with state fishery biologists to transplant nearly 3,000 surviving fish back into the reservoir as it began to refill with water.

The sediment spill and fish kill unleashed its own flood of public outcry highly critical of both the Department of Natural Resources (DNRC) and the Ruby Valley Water Users Association. They decided to form a task force to address short and long term needs of the river system. The agreements included establishing a minimum pool of water in the dam, setting up stream gauging stations for monitoring, and working towards establishing minimum stream flow levels that would benefit the river and fishery.

State officials were impressed by the ability of the Ruby River Task Force to develop a long term solution to a major problem. Subsequently, they asked the group to tackle the issue of public fishing access. New landowners have caused changes in the way the land was being used. This led to people not being able to get into fishing areas. In some instances, river front land owners offered fishing access on a fee basis while others provide both public access and free fishing.

In the fall of 1995, Montanans were asked to comment on a Department of Fish, Wildlife, and Parks (FWP) proposal to purchase a fishing access site and conservation easement. Reactions to the proposal were mixed. Adamant objection came from neighboring property owners. They feared that fishermen would trespass onto their property and their land value would diminish. In early 1996, the Director of FWP appointed the Ruby River Access Task Force. The recommendations of the task force were followed by an access plan written by FWP. This plan specified certain procedures under which the task force would contact landowners from a pool of 16 landowners and forwarded same to the Department. An independent observer was present at the negotiations between the landowners and FWP personnel.

Mr. Swan added that ranchers are very concerned about water quality. Legislation must protect property rights as well as the integrity of the ranching community. Individual contacts are more important than town meetings. People need ideas explained to them ahead of time.

► **Conservation District Perspectives**

Gary Giem agreed that water quality is a large issue for ranchers. Ranchers receive a lot of bad publicity for pollution. The Ruby Watershed Committee was developed to address this issue. Water quality problems are expensive; however, they have been successful in securing some grant monies. The 310 law has placed a significant burden in their conservation district. Changing land ownerships have developed a different set of problems. Their district is also responsible for the TMDL burden. DNRC and DEQ have been very helpful and responsive. He believes there are streams on the TMDL list that should not be there. Streams have been placed on the list for the wrong reasons. They have 40 streams on the list. It will take a lot of time for them to talk to the people on the streams and come up with plans that are workable. If these people believe their water rights are in danger, they will not be cooperative. They were fortunate to receive a \$5,000 grant to help respond to the TMDL legislation. They have a part time person working on gathering information but they are a long way from getting 40 streams delisted. Money is the main problem. The only way to solve water quality problems is for the state to come up with the funding necessary to accomplish the necessary projects.

► **Beaverhead Conservation District**

Art Christiansen presented his written testimony. See **Exhibit 8**.

► **Questions from Council Members**

SEN. GROSFIELD remarked that he is very impressed by the local involvement and common sense attitude of the citizens in the area. He supported the remark that local individuals are able to come up with ideas that government would never have considered. He further remarked that **Exhibit 7**, “Code of the New West”, was an excellent document. He questioned who would be receiving the document. **Mr. Garrett** explained that they have used their own funds for the project. As soon as more funds are available the document will be available at the county courthouse, Chamber of Commerce, and other areas in town.

SEN. GROSFIELD asked about the water quantity and time frame of the use of the wells on the Upper Big Hole. **Mr. Hagenbarth** explained that in the Upper Big Hole River, water was being diverted to water livestock. If a well was drilled in the area, the ditch could be turned off. Three or four wells at 12 gallons a minute would put 300 to 400 inches back into the river. **Mr. Christiansen** further remarked that the first wells were put in by FWP. In addition, there have been wells put in with a \$50,000 319 grant. They also have received a \$10,000 grant for a solar panel. Irrigation does not take place after

midsummer, but water is put into the ditches to water the cattle. The wells also accomplish the goal of getting the cattle off the river which is beneficial to the cattle as well as the environment.

SEN. GROSFIELD asked what would happen to the stock water rights. Would they be abandoned or converted to instream rights? **Mr. Christiansen** remarked that there is still water remaining. As long as irrigation took place in the spring, the rights would not be jeopardized.

SEN. GROSFIELD added that if there was more water in the stream, someone downstream may apply for a new permit. **Mr. Christiansen** stated that there is no water there anyway; however, if the ranchers were told they couldn't irrigate in August they would be very upset.

REP. OHS remarked that the TMDL legislation put a lot of work and responsibility on conservation districts. As a policy issue, legislators need to find a funding source. **Mr. Giem** remarked that the same volunteers work on all the issues and reach a point of burnout. They need to hire staff for portions of the project. They would appreciate help finding the right people.

CO-CHAIR COCCHIARELLA asked for further clarification on staff or resources needed. She was also concerned with the remark that it is easier to work with the federal government than it is to work with the state government. **Mr. Hagenbarth** stated that they are looking for an executive secretary. They have received a \$5,000 grant from the DNRC and are looking to other grant funds which will allow them to hire someone who can pull the project together. **Mr. Garrett** stated that the problems they have had with the state in land use areas is in making sure the groups are willing to come to the table and to make an effort to be an active participant.

CO-CHAIR COCCHIARELLA was impressed with the fact that the people in this area can live 40 to 50 miles apart and call themselves neighbors. In larger cities, we can leave next door to people and never know their names. She believed the groups from the Dillon area could be a role model for other Montana areas.

CO-CHAIR MESAROS asked what avenue the state could provide through the EQC or the Consensus Council to facilitate the actions in the area. **Mr. Hagenbarth** remarked that the state needs to work with all the groups. Montana is in the minority and it has something the majority wants. **Mr. Garrett** encouraged continued funding and expanded usage of the Consensus Council. He also suggested that the EQC work with the Consensus Council to find better processes for accomplishing goals. When problems are brought to Helena, they will be brought by a local group that has reached agreement on the concerns. **Mr. Swan** remarked that understanding can only be brought about by education. They are working on a computerized graphic which will show each landowner their water right placement.

CO-CHAIR MESAROS added that along with the increased demands there needs to be an elevated level of technical guidance provided by the state as well as adequate funding for project completion. He questioned how the access problem on the Ruby River was resolved. **Mr. Swan** explained that they asked every landowner if they would allow access. Sixteen landowners were interested under certain conditions. This was narrowed down to a few individuals whose property qualified under the FWP guidelines for access. Negotiations were through a third party and the landowners. Five access points were obtained by either lease or purchase. This seems to be working out quite well. FWP has done a good job; however, they needed to be pushed. A part-time warden monitors the sites for various legal qualifications as well as a general sense of how things are working. The feedback has been very positive.

SEN. GROSSFIELD questioned how many streams in the conservation district had 310 permits. **Mr. Giem** remarked that they reviewed approximately six to ten 310 applications at their monthly meetings. The base of the 310 law has been greatly expanded which has left a lot of gray areas. **Mr. Christiansen** added that the wealthy people who have purchased land are a big problem. Locally, they have protested but they are up against billionaires. They average five applications per monthly meeting. They take jurisdiction over streams that perennially flow to the Big Hole and Beaverhead Rivers.

V RENEWABLE RESOURCES GRANT AND LOAN PROGRAM UPDATE

MS. WILLIAMS explained that the following presentation was the fourth and last of the statutorily required water updates. **John Tubbs, DNRC**, would be presenting an overview of the Renewable Resource Grant and Loan Program and the 62 applications that they have received for this biennium. The questions, comments, and recommendations provided by the Council will be incorporated into the Water Policy Report to the Legislature.

Mr. Tubbs stated they have changed the format to allow comments to be incorporated earlier into their review. Historically, the projects were presented to the EQC shortly before the legislative session. By that time the agency had already decided what they would do and the governor had okayed the projects. Previously, if the EQC had any recommendations the only place this could be addressed was during the legislative session. The DNRC has requested \$125,000 of appropriation authority each biennium for their Emergency Grant and Loan Program, **Exhibit 9**. This program is funded through interest monies from the RIT Trust. This biennium they had an emergency grant for the City of Harlem. Their water intake facility pipeline collapsed and they were without water. They had executed one emergency loan for the Eastfork Rock Creek Dam which is west of Phillipsburg. This is a state owned dam that was in an unsafe condition.

Another program that isn't reviewed by the legislature is their private loan program. It provides loan funding for water projects. Approximately 99% are purchases of sprinkler irrigation systems. Water

associations have started to take advantage of this program. They are able to look at the revenue stream that an association presents and use that as the security. They loan up to \$300,000 at a fixed rate and the typical term is 15 years.

They have received over \$200,000 over the past four years for private grants. These funds are to be used for meeting regulatory requirements that private individuals, partnerships or corporations have to meet. The grant is limited to \$5,000 or 25% of the project cost, whichever is less. All of the above programs do not go before the legislature.

The core program involves governmental entities requesting up to \$100,000 of grants and large loans backed by the Coal Severance Tax Trust. They have contracted all but two of the grants approved by the 1997 Legislature. They coordinate with the other grant and loan programs within the state government that fund water, waste water, and solid waste facilities. They have developed one common application to apply for multiple sources of funding. Sixty-two applications have been submitted for this biennium.

Exhibit 10 They will only be able to fund one-third to one-half of the projects.

They use a point system to rank the projects. The key reviewers contact additional experts. If there are projects on the list that the EQC believes have strong benefits, they would be very interested in that information. Points can be lost if the financial plan is not properly prepared. There are also negative points for adverse environmental impacts. An implementation plan is also very important. They look very closely at the technical feasibility of the project. Public benefits are very important and include projects which conserve, manage or protect Montana's renewable resources. Points are added for projects that enhance renewable resources as well. Citizen support is also considered. Tie breaker points are assigned to State Water Plan projects. They have three staff members and five consultants reviewing the applications.

The selected applications are reviewed by the Director and are then sent to the Governor's Office. The selected applications then go to the Executive Budget and are before the Long Range Planning Committee, Subcommittee for Appropriations, and Senate Finance and Claims. All the project sponsors have an opportunity to give presentations before the final decision makers.

CO-CHAIR COCCHIARELLA asked if criteria were used to consider whether the project had a land use planning element. **Mr. Tubbs** stated that the planning element was included in project management points. They look at the alternative analysis to see if they have considered the bigger picture.

CO-CHAIR COCCHIARELLA asked whether the Growth Subcommittee could request that certain criteria, such as annexation possibilities, be incorporated into the point system. **Mr. Tubbs** remarked that

this is something that could be brought to the table during the legislative process. The statute could be modified to specifically require that type of criteria. He suggested that the Growth Subcommittee and the Long Range Planning Committee look into this idea.

CO-CHAIR MESAROS stated that most of the grant and loan applications have gone to existing infrastructure. A lot of the small towns around the state don't have subdivisions in their areas and are really struggling. **Mr. Tubbs** stated that infrastructure projects needed to have a strong connection to managing, protecting and improving water resources. The communities that do well in the DNRC's program are the ones that are installing water meters, lining lagoons and protecting water quality.

SEN. GROSFIELD asked if there was a \$100,000 maximum for the grants. **Mr. Tubbs** explained that there is no statutory maximum for a grant. By policy, they have recommended a \$100,000 maximum for each project. Those requesting more funds will need to go before the Long Range Planning Committee and justify why they should be funded more grant dollars than recommended.

REP. TASH remarked that the Municipal Waste Water Treatment System in Dillon has applied several times to the Long Range Planning Committee for funding assistance. They feel their problem is that their water and sewer rates are low. **Mr. Tubbs** remarked that they conduct an affordability analysis. They do not penalize a community for low rates.

SEN. GROSFIELD asked how many of the 62 applications were repeat applications. **Mr. Tubbs** remarked that the number would be small due to the length of time involved in the process.

VI DEPARTMENT OF FWP UPDATE ON THE FISHERIES BEYOND 2000 DOCUMENT, THE PROGRAMMATIC EIS FOR WILDLIFE PROGRAMS, AND 2020 VISION FOR MONTANA STATE PARKS DOCUMENT

MR. EVERTS referred to several handouts - EQC FWP Document Information Needs, **Exhibit 11**; Letter from Patrick Graham, **Exhibit 12**; and Wildlife Program Draft Environmental Impact Statement, **Exhibit 13**.

Chris Smith, Chief of State for FWP, stated that the first question they were asked is why are they engaged in strategic planning and the development of documents regarding same. He commented that cultural values of FWP include the following: 1) Montana has the highest per capita rate of participation in fishing and hunting in the United States. 2) Montana residents spend over 3 million days each year hunting and fishing. 3) Our state parks host over 1 million visitors each season.

The FWP contributes significantly to the economy in Montana. Annual expenditures in the state for fishing are in excess of \$160 million; hunting - \$195 million; and viewing wildlife - \$210 million. The agency reinvests over \$3 million each year in block management and trails maintenance agreements. They also spend over \$3 million each year on conservation easements. The FWP is big business in Montana.

Why is the department planning? Montana's population has grown 10% since 1990. Whirling disease has been discovered in 65 different rivers and streams in the state. The Department of Interior recently classified bull trout as threatened and is also looking at Westslope Cutthroat. The federal government has introduced wolves to Montana. More and more states are facing ballot initiatives and other challenges to traditional wildlife management programs. A lot of changes are going on within the environment that the FWP manages. They have limited resources and must prioritize their efforts. In addition, the Montana people want a role in the decision making regarding their fish, wildlife and parks.

Another question was related to the cost of the documents produced. Developing the Fisheries Beyond 2000 document cost approximately \$20,000 over a two year period. The Wildlife Programmatic EIS cost about \$600,000 over a period of eight years. 2020 Vision for Montana State Parks cost about \$60,000 over two and half years. The difference in cost and length of time are reflected in the processes that were used to develop the documents as well as the difference between the documents themselves.

A question was asked regarding the fiscal impact of each of the alternatives that are presented for the programmatic EIS. They have developed cost estimates for each of the alternatives and this can be found in the Wildlife Program Draft EIS Supplement (**Exhibit 13**). They haven't calculated specific costs for the fisheries and parks plans. In those cases the alternatives that were developed were designed either to address the base plan or base funding that is available for the programs.

Planning is a wise investment. They have spent approximately \$150,000 per year in the past several years working on strategic planning which is less than ½ of 1% of their budget.

Another question dealt with whether these documents would require statutory changes and also whether they set policy that could be more appropriately set by Legislature. The department recognizes the legislature's constitutional authority to establish policy in a broad context. The Legislature has delegated certain policy making authority to the Commission. The Director also establishes policy as do supervisors, division administrators, and managers at many levels within the organization. Each level must stay within the bounds set at a higher level. They believe their strategic plans reflect the appropriate policy level to be set by the Director. The plans will fall within the limits of the statutory and fiscal authority that the Legislature provides for the department. If initiatives are discovered that the public is

interested in having the department undertake that fall outside of their statutory authority or would require expenditure of funding beyond what they are currently capable of, the department will come to the Legislature with that information and request to adjust statutory authority or to amend the budget.

One question was the association between the plans and a fee increase. The department's last fee increase was in 1992 and they projected the increase would be sufficient through FY99. They do not intend to ask for a fee increase in 1999. In the 2001 Legislative Session there will be a new governor and it is also likely that the FWP will have a new director. Realistically, they are not anticipating a fee increase until the 2003 Legislative Session.

They were also asked about the public involvement in their strategic planning. The EIS has had the most extended public involvement which began with public meetings in 1992. In the intervening years they have continued to maintain dialogue with constituents through regular channels. A focus group was formed in 1996 specifically to review the EIS. The three documents were distributed across the state on April 1st of this year. Copies of the plans were sent to all legislators as well as to all candidates in the primary election. About 600 individuals and organizations across the state were mailed information. Formal hearings were held in seven communities related to the EIS. They have also met with sportsmen groups, county commissions, and other interested groups. They have received approximately 150 written comments as well as verbal input. They have received requests to extend the public comment period and this has been extended for an additional 30 days. (Additional handout - **Exhibit 14.**)

► **Questions from the Council**

SEN. GROSFIELD questioned what fee increase or other additional funding would be needed in 2003. **Don Childress, FWP**, remarked that the general operations budget is approximately \$6 million a year. A major expense could result in approximately an additional \$2.5 million a year. The hunting license fee actually pays for a larger portion of the department budget than just the wildlife program. **Mr. Smith** remarked the greatest potential for significant revenue increase for the agency would be caused by federal action dealing with wildlife or the reallocation of land use conservation funds. This could amount to \$1.5 million per year and would depend on matching formulas.

SEN. GROSFIELD asked if the comments received have been supportive. **Jim Satterfield, FWP**, explained that they have received about 50 comments on the fisheries plan. Most comments are supportive. The main comment is that the public is interested in habitat management. There have been comments on the merits of sport fish management versus recovery of threatened endangered species.

Mr. Childress remarked that the wildlife document has generated comments that pulled out various components of the alternatives. Access is a large issue. **Doug Monger, FWP**, remarked that the park

program has received significantly fewer comments than the other documents. People are generally supportive of the plan. Comments reflect issues at individual parks. A comment that stands out is that the northeastern part of the state does not have a state park. Most of the people are very supportive of action for a new state park in the area.

SEN. MESAROS asked if any comments addressed specific alternatives. **Mr. Childress** remarked that individual alternatives have not been accepted as the solution. **Mr. Smith** added that the comments received will be summarized and presented in each of the documents.

REP. TASH remarked that access is a sensitive issue in his area. He asked about the current status in the county. **Mr. Monger** stated that the private landowner on the other side of the Hannebury Bridge has worked with the county and the highway department. Access has been established on the old Highway 91 right-of-way for the people behind the bridge. This has allowed the agency to barricade the old Hannebury Bridge due to its unsafe condition. Long term solutions may include replacing the bridge at Ennis and moving that bridge to the Hannebury location.

REP. TASH stated that access has been adversely impacted. The purpose of the Hannebury Bridge was to provide sportsmen access to the west side of the Beaverhead River. He believed that the agency has a responsibility to maintain the access.

CO-CHAIR COCCHIARELLA questioned when the program planning would be implemented. **Mr. Smith** explained that the plans should be signed by Director Graham by early October. The plans will provide general direction for programs on an ongoing basis. The six year plans should be completed in early spring of next year. The annual work plans will be used as a part of the allocation of funding for the first year of the 2001 biennium.

SEN. GROSFIELD questioned whether the Chief of Staff position was a new position within the agency. **Mr. Smith** explained that it is a recreated position. Pat Graham formerly was the Chief of Staff. The Director has two Deputy Directors. **Mr. Smith** is Chief of Staff and **Arnie Olson** is Chief of Operations. **Mr. Smith** supervises the central staff in Helena, the division administrators, and is responsible for overall program development, guidance, strategic planning, etc. The regional supervisors located in the seven administrative regions in the state are responsible for implementation of department programs in the field and report to **Mr. Olson**.

VII COUNCIL DELIBERATIONS/DECISIONS

► Water Policy Subcommittee

MS. WILLIAMS stated that the Water Policy Subcommittee calendar was approved at yesterday's meeting. **Exhibit 15** The Subcommittee set a meeting for August 4th in Helena. The purpose of the meeting is to review the draft product which will be submitted to the Council in September. They are looking at three products: 1) Water Leasing Report, 2) HB 546 Oversight Report, and 3) the General Water Policy Report to the Legislature. Staff will be sending out a list of update topics for the members to decide which should be included in the report to the Legislature. The Subcommittee was briefed on the newly proposed chapter of the State Water Plan which is the ground water chapter. Jim Robinson gave an update. Comments were made regarding potential funding implications. The DNRC hopes to bring the plan back to the Subcommittee at the August meeting and to the full Council at the September meeting. Time was spent on an issue brought to the Compliance and Enforcement Committee by a Gallatin County resident which dealt with water rights and the impacts of development on water rights. Policy gaps were identified and options will be developed.

In regard to the Instream Flow Leasing Report, staff placed calls to stakeholders related to how they felt about instream flow leasing. It appears that the concerns from 1989 have subsided to a certain degree and the Subcommittee feels confident in moving forward with legislative proposals on extending the program. A bill draft will be presented for Council approval which will extend the program for a minimum of ten years and consideration will be given to removing the cap on the number of streams that can be leased.

The TMDL tour guide packet (**Exhibit 1**) included a proposed outline of the HB 546 oversight product. Comments may be provided to staff or Subcommittee Co-Chairs.

In preparation of the Water Policy Report, staff will summarize Council comments on updates. The offer has been made to Dorothy Bradley, Jim Stimson, and others involved in updates to provide summaries from their own perspectives to be incorporated into the report for consideration by Council.

SEN. MCCARTHY thanked MS. WILLIAMS and REP. TASH for their extraordinary effort in organizing the TMDL field tour.

► Growth Subcommittee

REP. GILLAN remarked that the Subcommittee met on the previous day, June 25th, and the agenda included four panels that addressed growth in their counties. The panels were made up of high growth smaller counties and high growth larger counties. Jefferson County highlighted the development of an agricultural zoning district that involved landowners imposing their own zoning restrictions. Subdividing is not allowed and the land is solely for agricultural uses. This was triggered by out-of-state real estate speculators purchasing sections of land for subdividing.

Madison County brought up the problem that they rely on a one-person contracted planning staff. They have limited resources to deal with the amount of growth they are facing. They had considered placing a moratorium on subdivision review but decided that would be counterproductive.

The City of Bozeman Assistant Planner reported that they have a much larger staff to deal with the impact of growth. There seems to be a lot of city/county coordination. Both the City of Bozeman and Gallatin County impose impact fees.

Flathead County is also experiencing tremendous growth. County wide planning has not been accepted. In response to growth, they have developed several neighborhood plans. They worked with the landowners to develop a futuristic plan for growth.

Family conveyances were a common problem for all areas. This seems to be a way for people to either skirt or circumvent subdivision review. In one area, 51% of the land that was transferred under a family conveyance exemption was in nonfamily ownership within two years. Another common theme is that the GIS is critical for everyone. It is a useful but expensive tool. Most counties would not like to see any changes in the subdivision law. There was concern regarding the cumulative impact of minor subdivisions which were reviewed on an individual basis. Resources for planning are very limited. Most counties spend a large amount of their time on subdivision review which does not leave any time for planning. City/county coordination was considered a key element to successful planning. In Flathead County, the planner has dual jurisdiction in that he is the city planner for various cities as well as the county planner.

The Subcommittee decided to narrow down the list of possible solutions for growth problems which may become legislative initiatives. It is important that the Subcommittee be aware of initiatives being proposed by other interested parties. A meeting was set for August 7th in Helena to look into initiatives of other interested parties as well as revisit the laundry list of solutions that the EQC staff has gleaned from all reports to the Subcommittee.

REP. TASH asked if there was any discussion regarding paying for developments with a land transfer tax. MS. GILLAN remarked that there have been discussions about how that would be funded. It is important to know what funds would be needed to provide implementation tools.

CO-CHAIR MESAROS questioned if there has been any discussion relating to water rights in the subdivision review process. The Water Policy Subcommittee received a report regarding a landowner's complaint that his water rights have been adversely affected with subdivision development. In this instance it was through the use of a 310 permit and a diversion approach. MS. SOUVIGNEY remarked that it has been mentioned but not specifically discussed by the Subcommittee.

CO-CHAIR COCCHIARELLA believed that this is an area where education would be a better answer than more regulation. Realtors need to know about statewide issues so they can be addressed at their training sessions.

SEN. MCCARTHY remarked that most complaints they have received are regarding realtors who are not based in Montana. Perhaps the Board of Realtors would consider taking steps to protect themselves. She suggested that perhaps the Council could ask the Beaverhead County Community Forum whether the booklet presented to the Council this morning could be amended and distributed on a statewide basis.

CO-CHAIR COCCHIARELLA remarked that perhaps the Council might work with the Forum on forming a partnership for distributing that type of education material.

► **Next Meeting**

CO-CHAIR COCCHIARELLA explained that the next meeting would be in Helena on September 10th and 11th.

She added that the Co-Chairs of the Water Policy Subcommittee, Co-Chairs of the EQC and staff would travel to Lewistown sometime in July to review the Kendall Mine issue. They will meet with mining personnel, local residents, and farmers and ranchers. They will be looking for a fair overview of the situation and what policy issues that the Council may want to address.

► **Public Comment**

REP. TASH explained that the handout which had been provided to the Council, **Exhibit 16**, included news articles relating to natural resource issues in the Dillon area. There has been concern that the Beaverhead County Community Forum was being used by public agencies as a decision making process. Individuals raised concerns that public input was not included. It is established in public law that decisions are outlined by statute rather than by administrative or executive action.

Debbie Barrett, Dillon area rancher, remarked that she is a latecomer to the Beaverhead County Community Forum. Others who have been there from its inception do not believe that the forum is working. It was created by MOU. After the MOU was created the county, federal government and state government decided they would operate on a countywide basis. The Gravelly Working Group and the Beaverhead Community Forum were formed. Each group also was created on a countywide basis. They are comprehensive county planning groups. The public does not know who is on the group, when they meet or where they meet. The plans are developed by information supplied by the agencies. The Gravelly Working Group has met for two years and has developed a document. They have no guidelines, no ground rules, and no policy. The residents of Beaverhead County are faced with two landscape documents and are concerned about how they will be used by the federal agencies.

CO-CHAIR COCCHIARELLA questioned whether the meetings were advertised and open meetings. **Ms. Barrett** explained that the interagency meetings were published at the courthouse. Minutes of all meetings were not being kept. They have been meeting from 1994 until present and have 23 meetings which have minutes.

REP. TASH remarked that there are questions and concerns. There has been a concerted effort to answer the questions. The documents are vision documents and have been prepared to help facilitate decisions through the Montana Environmental Policy Act, National Environmental Policy Act, or Forest Plan Act. The groups have to be commended for trying to put together a means of communicating concerns. He understands that the concern is whether the meetings will result in decisions rather than airing concerns. The documents were prepared as a means of ecosystem management. Public Land Council Attorney, John Bloomquist, stated that for reasons of addressing the concerns brought forward, that the meetings should be more advertised and open and used for an educational opportunity rather than a decision making opportunity.

SEN. MESAROS questioned whether the county commissioners had been involved in the planning process and also whether they had provided a public forum. **Ms. Barrett** explained that the MOU in Beaverhead County was the idea of a county commissioner who is still on the commission. Instead of appointing a planning group, they have delegated a loose community forum. They meet from 8:00 a.m. until noon which is a difficult time for a lot of people to attend. Government agencies are represented and the representatives are paid for attending the meetings. They provide the information which is reviewed. This is comprehensive county planning but it is unaccountable, unappointed, unelected, and unauthorized. The document is not representative of this county. If the county commissioners sign off on the documents, they become the county plan.

Mr. Giem stated that public comment is being accepted at a earlier point than it has been in the past. After an agency has made a decision and then allowed for public comment it is difficult to change the process. He raised a concern with the inconsistency of attendance at the meetings.

CO-CHAIR COCCHIARELLA asked that a policy issue be identified which dealt with legislation, rule making, or agency involvement specifically and that these concerns be provided to the Council.

VIII ADJOURNMENT

There being no further business, the meeting adjourned at 2:45 p.m.